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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 LUCIANO MOLINA RIOS,

11 Petitioner,

12 v.

13 STATE OF WASHINGTON,

14 Respondent.

CASE NO. C22-5931JLR

ORDER ADOPTING REPORT
AND RECOMMENDATION

15 Before the court is the report and recommendation of Magistrate Judge Theresa L.
16 Fricke (R&R (Dkt. # 5)) and *pro se* Petitioner Luciano Molina Rios's objections thereto
17 (Obj. (Dkt. # 6)). Having carefully reviewed the foregoing, along with all other relevant
18 documents and the governing law, the court ADOPTS the report and recommendation,
19 DENIES Mr. Rios's objections, and DISMISSES Mr. Rios's 28 U.S.C. § 2254 habeas
20 corpus petition (Pet. (Dkt. # 4)) without prejudice.¹

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22 ¹ Although Mr. Rios's objections are noted for March 10, 2023, the court finds they are
ripe for decision because Respondent has neither appeared nor been served in this case.

1 A district court has jurisdiction to review a Magistrate Judge’s report and
2 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). “A judge of the court
3 may accept, reject, or modify, in whole or in part, the findings or recommendations made
4 by the magistrate judge.” 28 U.S.C. § 636(b)(1). “The statute makes it clear that the
5 district judge must review the magistrate judge’s findings and recommendations de novo
6 if objection is made, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114,
7 1121 (9th Cir. 2003) (en banc). Because Mr. Rios is proceeding *pro se*, this court must
8 interpret his petition and objections liberally. *See Bernhardt v. Los Angeles Cnty.*, 339
9 F.3d 920, 925 (9th Cir. 2003).

10 Magistrate Judge Fricke recommends that the court dismiss Mr. Rios’s habeas
11 petition without prejudice because it challenges the same conviction and sentence as Mr.
12 Rios’s earlier-filed habeas petition in *Rios v. Uttecht*, No. C22-5245JHC-TLF (W.D.
13 Wash.) (“*Rios I*”). (R&R at 2-4.) In accordance with the Ninth Circuit’s guidance that a
14 later-filed habeas petition should generally be considered a motion to amend an
15 earlier-filed pending habeas petition, Magistrate Judge Fricke has issued an order in
16 *Rios I* granting Mr. Rios leave to file a motion to amend his petition in that action to
17 include the claims he asserts in this action. *See* Order Permitting Petitioner to Seek
18 Leave to Amend Petition and Renoting Petition, *Rios I* (W.D. Wash. Feb. 21, 2023), Dkt.
19 # 14 (citing *Woods v. Carey*, 525 F.3d 886, 890 (9th Cir. 2008)).

20 Although Mr. Rios “respectfully objects to all elements of Judge Fricke’s Report
21 and Recommendation” (Obj. at 1), he also states that he filed this action only due to a
22 perceived delay in deciding the petition he filed in *Rios I* and asserts that his filing

1 “serves as a notice to the court, that [he] will be filing a petition ‘to Seek Leave to Amend
2 Petition and Renoting Petition,’ with a proposed amended petition, and a motion to unite
3 or combine the two cases before this court” before March 31, 2023 (*id.* at 1-2.)

4 On de novo review, the court agrees with Magistrate Judge Fricke that the
5 appropriate course of action is to allow Mr. Rios to move to amend his habeas petition in
6 *Rios I* to add the claims he asserts in his petition in this case and to dismiss this action
7 without prejudice. Magistrate Judge Fricke’s February 21, 2023 order in *Rios I* provides
8 Mr. Rios a mechanism to assert all of his challenges to his conviction and sentence in a
9 single habeas petition without any need to file a separate motion to “unite or combine”
10 the two actions. Accordingly, the court ORDERS as follows:

11 (1) Magistrate Judge Fricke’s report and recommendation (Dkt. # 5) is
12 ADOPTED in its entirety;

13 (2) Mr. Rios’s 28 U.S.C. § 2254 habeas corpus petition (Dkt. # 4) is
14 DISMISSED without prejudice;

15 (3) Mr. Rios shall file his motion for leave to amend his habeas petition, if any,
16 in *Rios I*; and

17 (4) the Clerk is DIRECTED to send copies of this order to Magistrate Judge
18 Fricke and to Mr. Rios.

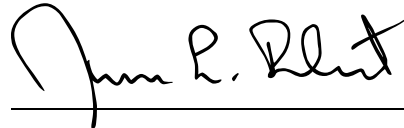
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1 Dated this 2nd day of March, 2023.

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4 JAMES L. ROBART
5 United States District Judge
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